

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 136 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-13-1-16.5 IS ADDED TO THE INDIANA
- 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) As used in this**
- 6 **section, "covered transaction" means the award of a contract**
- 7 **under:**
- 8 (1) IC 4-13.6-6-2.8;
- 9 (2) IC 5-16-1-7.5;
- 10 (3) IC 8-10-1-7.7; or
- 11 (4) IC 8-23-9-4.6.
- 12 (b) As used in this section, "resident of Indiana" means a person
- 13 who is at least eighteen (18) years of age and is one (1) of the
- 14 following:
- 15 (1) A person who has registered a motor vehicle in Indiana.
- 16 (2) A person who is registered to vote in Indiana.
- 17 (3) A person who has a child enrolled in an elementary or a
- 18 secondary school located in Indiana.
- 19 (4) A person who derives more than one-half (1/2) of the
- 20 person's gross income (as defined in Section 61 of the Internal
- 21 Revenue Code) from sources in Indiana, according to the
- 22 provisions applicable to determining the source of adjusted
- 23 gross income that are set forth in IC 6-3-2-2. However, a
- 24 person who would otherwise be considered a resident of

Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(c) Before October 1 of 2010 and each year thereafter, the commissioner shall compile, make available for public inspection, and submit to the legislative council a report for the preceding state fiscal year stating:

(1) for the contractors awarded contracts in covered transactions; and

(2) for the subcontractors with which the contractor referred to in subdivision (1) enter into subcontracts in connection with contracts awarded in covered transactions;

the percentage of the employees of the contractors and subcontractors who work on the contracts and are residents of Indiana. The report to the legislative council must be in an electronic format under IC 5-14-6.

SECTION 2. IC 4-13.6-6-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.8. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering a bid under this chapter for a public works project, each contractor shall provide the division with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%)

of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the division shall file with the commissioner a report for the preceding year stating:

(1) for each contractor awarded a contract under this chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the division determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 3. IC 5-16-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the state or commission with information

on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the state or a commission entering into contracts under this chapter shall file with the commissioner of the Indiana department of administration a report stating:

(1) for each contractor awarded a contract under this chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the state or commission determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 4. IC 5-16-8-1, AS AMENDED BY P.L.3-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Foundry products" means products cast from ferrous and nonferrous metals by foundries in ~~the United States~~ **Indiana**.

(c) "Person" means a natural person, corporation, limited liability company, partnership, or other business unit or association.

(d) "Public agency" means:

(1) the state of Indiana;

(2) a department, agency, board, commission, or institution of the

1 state of Indiana; or  
 2 (3) a county, city, township, school or conservancy district, or  
 3 other governmental unit or district;  
 4 that receives public bids for construction or other public works under  
 5 Indiana law.

6 (e) "Steel products" means products rolled, formed, shaped, drawn,  
 7 extruded, forged, cast, fabricated, or otherwise similarly processed, or  
 8 processed by a combination of two (2) or more of such operations, from  
 9 steel made in ~~the United States~~ **Indiana** by the open hearth, basic  
 10 oxygen, electric furnace, Bessemer, or other steel making process.

11 (f) ~~"United States" refers to the United States of America. The term~~  
 12 ~~includes all territory, continental or insular, subject to the jurisdiction~~  
 13 ~~of the United States.~~

14 SECTION 5. IC 5-16-8-2, AS AMENDED BY P.L.6-2007,  
 15 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 UPON PASSAGE]: Sec. 2. (a) Each public agency shall require that  
 17 every contract for the construction, reconstruction, alteration, repair,  
 18 improvement or maintenance of public works contain a provision that,  
 19 if any steel or foundry products are to be used or supplied in the  
 20 performance of the contract or subcontract, only steel or foundry  
 21 products made in ~~the United States~~ **Indiana** shall be used or supplied  
 22 in the performance of the contract or any of the subcontracts unless the  
 23 head of the public agency determines, in writing, that the cost of steel  
 24 or foundry products is considered to be unreasonable.

25 (b) The head of each public agency shall issue rules which provide  
 26 that, for purposes of subsection (a), the bid or offered price of any steel  
 27 or foundry products of ~~domestic~~ **Indiana** origin is not considered  
 28 unreasonable if the price does not exceed the sum of:

29 (1) the bid or offered price of like steel or foundry products ~~of~~  
 30 ~~foreign origin~~ **originating outside Indiana** (including any  
 31 applicable duty); plus

32 (2) a differential of fifteen percent (15%) of the bid or offered  
 33 price of the steel or foundry products ~~of foreign origin~~.  
 34 **originating outside Indiana.**

35 However, the fifteen percent (15%) differential provided by  
 36 subdivision (2) may be increased to twenty-five percent (25%), if the  
 37 head of the public agency determines that use of steel or foundry  
 38 products of ~~domestic~~ **Indiana** origin would benefit the local or state  
 39 economy through improved job security and employment opportunity.  
 40 Whenever the head of a public agency determines that the differential  
 41 should be increased above fifteen percent (15%) for a particular  
 42 project, the head of the agency shall file a report with the governor and  
 43 the legislative services agency detailing the reasons for such  
 44 determination and the probable impact on the economy of the use of  
 45 ~~domestic~~ **Indiana** steel or foundry castings in the project. A report filed  
 46 under this subsection with the legislative services agency must be in an

1 electronic format under IC 5-14-6.

2 SECTION 6. IC 5-16-8-4, AS AMENDED BY P.L.6-2007,  
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 UPON PASSAGE]: Sec. 4. This chapter does not apply if the head of  
5 the public agency determines, in writing, that steel or foundry products  
6 are not produced in ~~the United States~~ **Indiana** in sufficient quantities  
7 to meet the requirements of the contract.

8 SECTION 7. IC 5-16-8-6 IS ADDED TO THE INDIANA CODE  
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
10 UPON PASSAGE]: **Sec. 6. (a) The Indiana department of  
11 administration shall develop criteria for determining whether steel  
12 or foundry products are produced in Indiana.**

13 **(b) The Indiana department of administration shall do the  
14 following:**

15 **(1) Publish on an Internet web site the criteria developed  
16 under subsection (a).**

17 **(2) Maintain on an Internet web site a list of businesses and  
18 products that meet the criteria developed under subsection  
19 (a).**

20 SECTION 8. IC 5-16-13 IS ADDED TO THE INDIANA CODE AS  
21 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
22 PASSAGE]:

23 **Chapter 13. Procurement for Public Works Projects**

24 **Sec. 1. This chapter does not apply to the terms of a contract  
25 that are subject to IC 5-16-8 for the procurement of steel or  
26 foundry products.**

27 **Sec. 2. (a) The definitions in this section apply throughout this  
28 chapter.**

29 **(b) "Person" means an individual, corporation, limited liability  
30 company, partnership, or other business unit or association.**

31 **(c) "Public agency" means:**

32 **(1) the state of Indiana;**

33 **(2) a department, agency, board, commission, or institution of  
34 the state of Indiana; or**

35 **(3) a county, city, township, school or conservancy district, or  
36 other governmental unit or district;**

37 **that receives public bids for construction or other public works  
38 under Indiana law.**

39 **Sec. 3. Each public agency shall require that every contract for  
40 the construction, reconstruction, alteration, repair, improvement  
41 or maintenance of a public works project contain a provision that,  
42 if any materials, equipment, or other durable goods are to be used  
43 or supplied in the performance of the contract or subcontract, only  
44 materials, equipment, or durable goods made in Indiana may be  
45 used or supplied in the performance of the contract or any of the  
46 subcontracts unless the head of the public agency determines, in  
47 writing, that the cost of Indiana products is considered to be**

1 unreasonable.

2       **Sec. 4.** The head of each public agency shall issue rules that  
3 provide that, for purposes of section 3 of this chapter, the bid or  
4 offered price of any material, equipment, or durable good made in  
5 Indiana is not considered unreasonable if the price does not exceed  
6 the sum of:

7           (1) the bid or offered price of like materials, equipment, or  
8 durable goods of foreign origin (including any applicable  
9 duty); plus

10          (2) a differential of fifteen percent (15%) of the bid or offered  
11 price of the materials, equipment, or durable goods of foreign  
12 origin.

13 However, the fifteen percent (15%) differential provided by  
14 subdivision (2) may be increased to twenty-five percent (25%), if  
15 the head of the public agency determines that use of material,  
16 equipment, or durable goods made in Indiana would benefit the  
17 local or state economy through improved job security and  
18 employment opportunity. Whenever the head of a public agency  
19 determines that the differential should be increased above fifteen  
20 percent (15%) for a particular qualified project, the head of the  
21 agency shall file a report with the governor and the legislative  
22 services agency detailing the reasons for that determination and  
23 the probable impact on the economy of the use of material,  
24 equipment, or durable goods made in Indiana in a public works  
25 project. A report filed under this subsection with the legislative  
26 services agency must be in an electronic format under IC 5-14-6.

27       **Sec. 5.** A public agency may not authorize or make any  
28 payments to a person under a contract for a public works project  
29 containing the provision required by section 3 of this chapter  
30 unless the public agency is satisfied that the person has fully  
31 complied with that provision. Payments made to a person by a  
32 public agency that should not have been made as a result of this  
33 section are recoverable directly from the contractor or  
34 subcontractor who did not comply with section 3 of this chapter by  
35 the attorney general upon suit filed in the circuit court of the  
36 county in which the contract for the qualified project was executed  
37 or performed.

38       **Sec. 6.** This chapter does not apply if the head of the public  
39 agency determines, in writing, that the materials, equipment, and  
40 durable goods required for a public works project are not  
41 produced in Indiana in sufficient quantities to meet the  
42 requirements of the contract for the qualified project.

43       **Sec. 7. (a)** The Indiana department of administration shall  
44 develop criteria for determining whether materials, equipment,  
45 and durable goods commonly required for public works projects  
46 are produced in Indiana.

47       **(b)** The Indiana department of administration shall do the

following:

(1) Publish on an Internet web site the criteria developed under subsection (a).

(2) Maintain on an Internet web site a list of businesses and materials, equipment, and durable goods that meet the criteria developed under subsection (a).

**Sec. 8. This chapter is designed to promote the general welfare of the people of Indiana and is supplemental to all laws concerning public works and shall be liberally construed to fully effectuate its purposes."**

Page 3, after line 4, begin a new paragraph and insert:

"SECTION 10. IC 8-10-1-7.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.7. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:**

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the commission with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the commission shall file with the commissioner of the Indiana department of administration a report stating:

(1) for each contractor awarded a contract under this



chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the commission determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 11. IC 8-23-9-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.6. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the department with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

1 (1) employ residents of Indiana as at least ninety percent  
 2 (90%) of the employees of the contractor who work on the  
 3 contract; and

4 (2) enter into subcontracts only with subcontractors who  
 5 employ residents of Indiana as at least ninety percent (90%)  
 6 of the employees working on the subcontract.

7 (d) Before August 15 of 2010 and each year thereafter, the  
 8 department shall file with the commissioner of the Indiana  
 9 department of administration a report stating:

10 (1) for each contractor awarded a contract under this  
 11 chapter; and

12 (2) for each subcontractor with which a contractor referred  
 13 to in subdivision (1) enters into a contract in connection with  
 14 a contract awarded under this chapter;

15 the percentage of the employees of the contractor or subcontractor  
 16 who work on the contract and are residents of Indiana.

17 (e) A contract awarded under this chapter for a public works  
 18 project is terminated if the department determines that the  
 19 contractor has failed to:

20 (1) employ residents of Indiana as at least ninety percent  
 21 (90%) of the employees who work on the contract; and

22 (2) enter into subcontracts only with subcontractors who  
 23 employ residents of Indiana as at least ninety percent (90%)  
 24 of the employees who work on the subcontract.

25 (f) A contract awarded under this chapter for a public works  
 26 project must require a contractor or subcontractor who fails to  
 27 employ residents of Indiana as at least ninety percent (90%) of the  
 28 employees who work on the contract or subcontract to pay as  
 29 liquidated damages one thousand dollars (\$1,000) for each  
 30 nonresident of Indiana employed that exceeds the number of  
 31 nonresident employees permitted by this section.

32 SECTION 12. IC 36-1-12-5.5 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) As used in this section,  
 35 "resident of Indiana" means a person who is at least eighteen (18)  
 36 years of age and is one (1) of the following:

37 (1) A person who has registered a motor vehicle in Indiana.

38 (2) A person who is registered to vote in Indiana.

39 (3) A person who has a child enrolled in an elementary or a  
 40 secondary school located in Indiana.

41 (4) A person who derives more than one-half (1/2) of the  
 42 person's gross income (as defined in Section 61 of the Internal  
 43 Revenue Code) from sources in Indiana, according to the  
 44 provisions applicable to determining the source of adjusted  
 45 gross income that are set forth in IC 6-3-2-2. However, a  
 46 person who would otherwise be considered a resident of  
 47 Indiana under this subdivision is not a resident of Indiana if

1           a preponderance of the evidence concerning the factors set  
2           forth in subdivisions (1) through (3) proves that the person is  
3           not a resident of Indiana.

4           (b) When entering a bid under this chapter, each contractor  
5           shall provide the unit of local government with information on the  
6           number of residents of Indiana who will be employed by the  
7           contractor and the number of residents of Indiana who will be  
8           employed by any subcontractor of the contractor.

9           (c) A contract for a public works project under this chapter may  
10          not be awarded to a contractor who does not:

11          (1) employ residents of Indiana as at least ninety percent  
12          (90%) of the employees of the contractor who work on the  
13          contract; and

14          (2) enter into subcontracts only with subcontractors who  
15          employ residents of Indiana as at least ninety percent (90%)  
16          of the employees working on the subcontract.

17          (d) A contract awarded under this chapter for a public works  
18          project is terminated if the unit determines that the contractor has  
19          failed to:

20          (1) employ residents of Indiana as at least ninety percent  
21          (90%) of the employees who work on the contract; and

22          (2) enter into subcontracts only with subcontractors who  
23          employ residents of Indiana as at least ninety percent (90%)  
24          of the employees who work on the subcontract.

25          (e) A contract awarded under this chapter for a public works  
26          project must require a contractor or subcontractor who fails to  
27          employ residents of Indiana as at least ninety percent (90%) of the  
28          employees who work on the contract or subcontract to pay as  
29          liquidated damages one thousand dollars (\$1,000) for each  
30          nonresident of Indiana employed that exceeds the number of  
31          nonresident employees permitted by this section.

32          SECTION 13. An emergency is declared for this act."

33          Renumber all SECTIONS consecutively.

(Reference is to ESB 136 as printed March 13, 2009.)

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Representative Pelath